



Max Planck Institute  
for Comparative Public Law  
and International Law

## Natural Persons Supplying Services in Trade Agreements: Mismatch with Immigration Law?

---

*Dr. Jürgen Bast, Senior Research Fellow*

Markets for Migration and Development (M4MD)

Session 4: Labour Mobility and Trade Agreements

Berne, 13–15 September 2011



# Concurrent Perspectives of Migration Governance

- Migrants as market participants: economic approach
- Migrants as trouble makers: aliens police
- Migrants as non-nationals: foreign policy
- Migrants as strangers or kins: cultural identities
- Migrants as persons: rights-based approach



# Trade & Migration

- Multilateral: WTO/GATS
- Bilateral: RTAs

How do they couple the concurrent perspectives of migration, respectively?



# WTO/GATS

- Movement of natural persons under GATS
  - Border-crossing of independent service providers
  - Posting of workers employed in service industries based abroad
  - Transfer of personnel to a commercial presence abroad within multinational service industries
- GATS = framework for negotiations
- GATS = most-favoured-nation treatment



# GATS' immigration law carve-outs

- Carve-out I: no jurisdiction for non-permanent forms of migration
- Carve-out II: policing territorial access justifies discrimination on the basis of origin
- Non-admission on economic grounds?
- Coupling perspectives by deference to national law (no regulatory machinery)



# Bilateral (Trade) Agreements

- Addressing non-economic concerns through
  - Selective choice of State parties
  - Various side-agreements
  - Dialogue and cooperation
- Cons:
  - Unjustified discriminations
  - Bargaining power of countries of origin
  - Postcolonial dependency



# Policy recommendations

- Expansion of the actual scope of commitments on Mode 4 is not advisable
- Service (and labour) migration should be embedded in a broader bilateral framework
- Taking RTAs seriously (“substantial sectoral coverage”)
- Waiving developing countries from MFN treatment concerning service migration